

## REMARKS

In the Office Action dated January 4, 2005, claims 1-24 were pending. Claims 1-12, 23 and 24 stand rejected while claims 13-22 are objected to. Applicants respectfully request that the Examiner reconsider the standing rejections in light of the following comments.

### **35 U.S.C. § 102(b) Rejection:**

Claims 1-10 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,145,474 issued to Moore (hereinafter the Moore patent). Applicants respectfully traverse this rejection while simultaneously amending claim 1 and claim 8 to further clarify the invention for the Examiner.

### **The Moore Patent:**

The Examiner argues that each and every limitation of claim 1 is disclosed by the Moore patent. Applicants respectfully traverse. Specifically, the Moore patent does not disclose a platform that is rotatably tiltably connected to a base. For example, Applicants do not believe that Moore's sphere 1 is comparable to Applicants platform. Further, Applicants believe that Moore's sphere 1 is only rotatable about its base 11 (not the hollow 18 as identified by the Examiner) and not rotatably tiltable about the base as required by Applicant's claim 1.

Nevertheless, Applicants herein amend claim 1 to specify that the platform has a substantially flat, foot engaging top surface. The foot engaging top surface limitation is being incorporated into claim 1 from a herein cancelled, later dependent claim, while including that the foot engaging surface be substantially flat. By definition, the Moore patent's sphere as a platform cannot include such a substantially flat, foot engaging top surface. Further, Applicants

hope that this amendment further clarifies how the Moore patent's sphere is rotatable while Applicants' platform is rotatably tiltable about the base (further explained below).

Therefore, as each and every limitation of claim 1 is not disclosed in the Moore patent, Applicants respectfully request that the Section 102 rejection based upon the Moore patent be withdrawn and claim 1 be indicated as allowable. Further, as claims 2-4, new claim 25, and claims 6 and 7 depend from claim 1, these claims likewise are allowable.

The Examiner argues that each and every limitation of claim 8 is disclosed by the Moore patent. Applicants respectfully traverse. Many of the arguments provided above with respect to claim 1 are likewise applicable to claim 8. Therefore, Applicants respectfully request that the Examiner withdraw the Section 102 rejection of claim 8 and indicate claim 8 and its dependent claims 9 through 11 allowable over the art.

**The Cassidy Patent:**

Claims 1, 3-4, 12, and 23-24 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,941,807 issued to Cassidy et al. (hereinafter the Cassidy patent). Applicants respectfully traverse this rejection. However, Applicants herein amend independent claims 1, 12, and 23 to clarify that the platform has a substantially flat, foot engaging top surface.

The issue regarding all rejections, and specifically the 102 rejections based upon the Cassidy patent, deal directly with what does "rotatably tiltable" mean? Applicants understand the Examiner's arguments and agree that Cassidy includes a platform that is rotatable (rotatable about shaft 84) and tiltable (tiltable about pin 92). However, Applicants do not claim a platform that is both tiltable and rotatable as mutually exclusive operations. Applicants admit that the English language is a limitation in this particular case. A specific and complex motion is

claimed by the phrase rotatably tiltable. To the extent that the following example helps the Examiner understand that motion, Applicants respectfully request that the Examiner consider the following comments. Should the Examiner believe that such motion is not accurately reflected in the phrase “rotatably tiltable” Applicants request that the Examiner contact undersigned counsel to discuss this issue in greater detail.

Applicants’ platform is obviously prevented from rotating 360 degrees about a horizontal axis because the platform interferes with the base. Therefore, this limited rotation of the platform about the horizontal axis is defined as tilt. Further, this tilt can occur not only along a single horizontal axis but along an entire plane. Therefore, the platform’s tilting motion can be translated from one position to another along that plane for continuous motion. Thus, because the platform’s tilting action can be translated from one position to another about a 360 degree vertical axis, such motion of the platform is defined as being rotatably tiltable, i.e. wherein the tilt can be rotated for continuous motion about 360 degrees. Therefore the platform is described in the claims as rotatably tiltable for continuous motion.

However, such platform motion is not possible in the Cassidy patent. While Cassidy’s platform 80 rotates about an axis 84, the platform is only tiltable in one direction...between an elevated position shown in FIG. 4 and a flat position shown in FIG. 3. While the single, fixed tilt axis can be manually rotated about a vertical axis to a single, set position as described in Column 4, lines 46-55 such action is not continuous in motion. Therefore, because the Cassidy platform can rotate and can only be pivoted in one direction at a time, the phrase that would best describe Cassidy’s platform motion would be tiltably rotatable non-continuous motion.

Therefore, the Cassidy patent does not disclose the invention as claimed by Applicants and therefore all Section 102 rejections based upon the Cassidy patent should be withdrawn and the claims indicated as allowable.

**Function Language:**

The Examiner argues that several limitations “have not been given patentable weight because the limitation is purely functional in nature and does not recite any structure.” The Examiner argues that such language is found in claims 1, 2, 3, 4, 8, 9, 12, and 23. Applicants traverse such statements and failure to exam explicitly recited claim language as improper and requests that the Examiner explicitly retract these statements and indicate that such language has been fully considered during patentability.

As expressly stated in MPEP 2173.05(g), “There is nothing inherently wrong with defining some part of an invention in functional terms.” Further, this section explicitly requires that “A functional limitation must be evaluated and considered, just like any other limitation of the claim, for what it fairly conveys to a person of ordinary skill in the pertinent art in the context in which it is used.” A functional limitation is often used in association with an element, ingredient, or step of a process to define a particular capability or purpose that is served by the recited element, ingredient or step.

Therefore, it is improper for the Examiner to ignore any “functional” language in Applicants claims. Further, Applicants seek clarification regarding how the language of claims 3 and 4 is considered functional. Claim 3 requires that the base be manufactured from molded plastic and Claim 4 requires that the platform be manufactured from molded plastic. Such composition limitations are clearly structural in nature and not functional. Further, Applicants

are unclear how claims 3 and 4 can be rejected as having functional language and such a rejection is not provided for claims 18 and 19. Therefore, Applicants respectfully request that the Examiner explicitly retract this functional language objections and indicate that all claim language has been fully considered during patentability.

New claims 25 and 26 have been added for the Examiner's consideration. Early allowance is respectfully requested.

Should the Examiner have any questions pertaining to the above, undersigned Counsel would welcome a phone call to provide any further clarification. Therefore, based upon the above, Applicants respectfully submit that the application is now in condition for allowance.

Respectfully submitted,



Robert H. Earp, III Reg. No. 41,004  
McDonald Hopkins Co., LPA  
600 Superior Avenue, E.  
Suite 2100  
Cleveland, OH 44114-2653  
(216) 348-5740

Date: April 4, 2005